

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**COMMENTS OF THE VILLAGE OF MAYVILLE, NY**

These Comments are filed by the Village of Mayville, NY in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Village of Mayville, NY believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Mayville is a village with a population of 1756. Our franchised cable provider is Adelphia. Our community has negotiated cable franchises since 1983.

**Our Current Franchise**

Our current franchise began on May 22, 2002 and expires on May 22, 2012. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the village in the amount of 5% of the cable operator's revenues. The revenues for franchise fee

purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to public access; one channel (or capacity) devoted to educational access; and one channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: a one-time capital equipment grant at the beginning of the current franchise.

Our franchise contains the following requirements regarding emergency alerts: The cable company shall comply with applicable provisions of the FCC Emergency Alert System regulations and shall cooperate with the village during any period of such emergency or disaster. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. All terms and conditions of the franchise are subject to State and Federal law, and to the rules and regulations of the New York State Public Service Commission, and subject to approval of the New York State Public Service Commission.

Our franchise contains the following reasonable build schedule for the cable operator: Upgrade to at least 550 MHz within three years of the effective date of franchise.

Our franchise requires that the cable operator currently provide service to the following areas of our community: Where average number of homes per mile of aerial cable plant is twenty or greater or twenty-five or greater for underground plant.

Our franchise contains a "non-exclusive clause" whereby such additional franchises shall have substantially the identical terms and conditions, and include substantially the same privileges and obligations as are contained in the existing franchise agreement.

Our franchise contains the following insurance and bonding requirements: \$1,000,00 combined-single limit for bodily injury or death and property damage per

occurrence with annual aggregate of \$2,000,000 and excess liability coverage of at least \$3,000,000.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. Permit is specifically for any pavement cuts made by any entity and there is no fee charged for the permit.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Specific violations subject the franchise to revocation. Other violations (technical performance) are subject to provisions of the New York State Public Service Commission.

## **The Franchising Process**

The cable system serving our community also serves eight other adjoining communities. In 2001 and 2002 our community worked together with one other community to issue a cable franchise for the Adelphia cable company. This allowed the company to quickly obtain franchises in these two communities so as to be able to serve a larger region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Both parties acknowledge that State and Federal laws have been enacted which may restrict, limit or foreclose the Grantor's rights to regulate various aspects of Grantee's conduct during the course of construction, operation and maintenance of the cable television system or to impose various conditions in granting such franchise.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Franchise agreement contains provisions for the cable company to be given a hearing in relation to any franchise provisions that the village has notified the cable company it is in violation of.

## **Competitive Cable Systems**

Our community has actively sought out competitive providers, but has not been successful. Several years ago the Village of Mayville and another municipality met with a potential company regarding an overbuild.

## **Conclusions**

The local cable franchising process functions well in the Village of Mayville, NY. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Village of Mayville, NY therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

VILLAGE OF MAYVILLE, NY

By: Charles L. Kelsey  
Village Clerk  
by direction of the Board of Trustees

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